



# New Directions

Charles L. Scott, MD  
Professor of Clinical Psychiatry  
University of California, Davis

**I have no disclosures to  
make.**

# GOALS AND OBJECTIVES

- Discuss types of jail diversion
- Review research outcomes for diversion programs
- Highlight important components of a diversion program

# DEFINITION

- Programs that are designed to divert and redirect individuals from the justice system to alternative treatment-based programs as a more appropriate and effective strategy for their care.



1. Who to divert?
2. Where to divert?
3. Why divert?
4. When divert?
5. What is result of diverting?



# **1. WHO TO DIVERT?**

# DIVERSION CANDIDATES

- Individuals with a treatable mental disorder
- Individuals with a substance use disorder
- Can be safely maintained in community
- Programs vary regarding whether persons with misdemeanor charges only are eligible



## **2. WHY DIVERT?**

# OVERVIEW

- Significant overcrowding of jails and prisons
- 15 to 25% of inmates with a serious mental illness (SMI)



# **“CRIMINALIZATION” OF MENTALLY ILL**

- Individuals with psychiatric disorders:
  - Increased arrest rates
  - More frequent denial of bond
  - Increased jail and prison time

# “Therapeutic Jurisprudence”



**“The study of the role of the  
law as a therapeutic agent.”**

**Winick, 1997, p. 185**

# TJ GOALS

- Applies law in best way to benefit all individuals
- Increase therapeutic aspects
- Decrease antitherapeutic aspects
- Protect due process rights of offenders and victims

**WHERE TO DIVERT?**

# WHERE TO DIVERT?

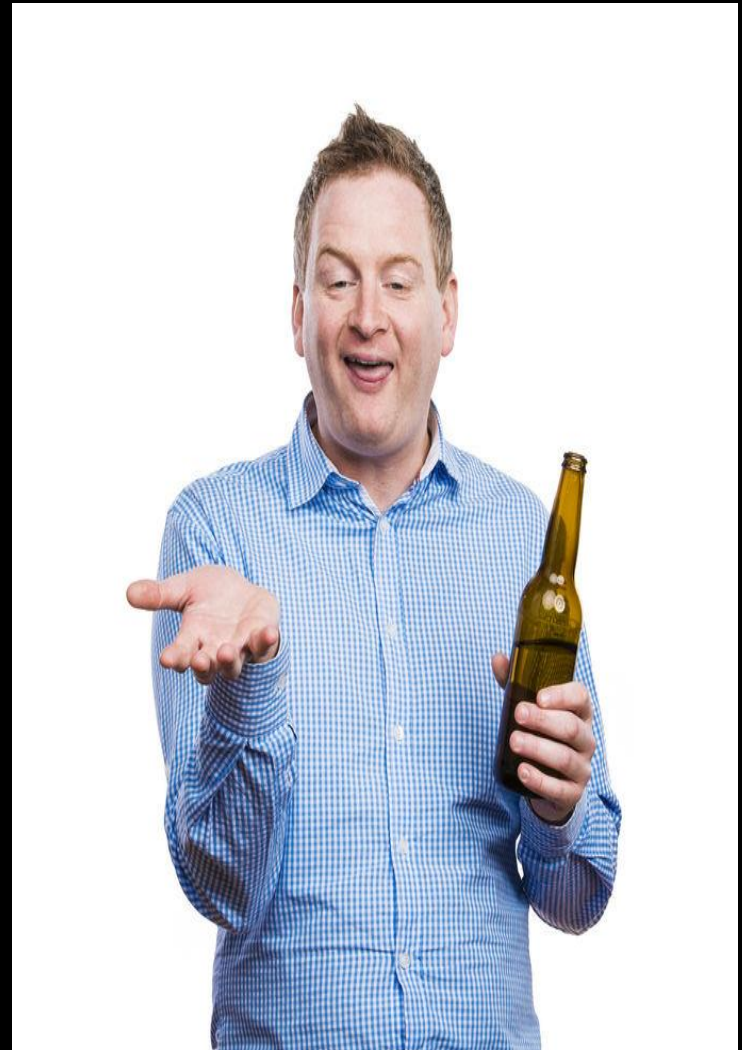
- Emergency room evaluation
- Psychiatric inpatient care
- Community based treatment programs
  - Are linkages in place to divert to treatment?
  - Are evidence-based treatments available?





# “SOBERING CENTERS”

- In 2010, police arrested 20,508 persons with public intoxication and took to jail
- Diversion policy created “sobering centers”



# “SOBERING CENTERS”

- **Criteria:**

- 18 or older
- Voluntary
- Ambulatory
- Not in mental health crisis
- Non combative
- Pass brief medical screening

**95% drop in public  
intoxication jail admissions!**

**19,500 fewer jail admits!**

**WHEN TO DIVERT?**

# SEQUENTIAL INTERCEPT MODEL

*(Munitz and Griffin 2006)*

- Cross-systems framework
- Respond to people with MI in justice system
- Six interception points to treat or divert





**Police**

**ER  
services**

**Booking**

**Appear  
in court**

**Jails**

**Courts**

**Jail  
reentry**

**Prison  
reentry**

**Community  
Corrections**

**Probation**

**Parole**





**DOES DIVERSION  
WORK?**

# PRE-BOOKING MODELS

- Officer and mental health specialist “Ride alongs”
- Mobile Crisis Intervention Teams

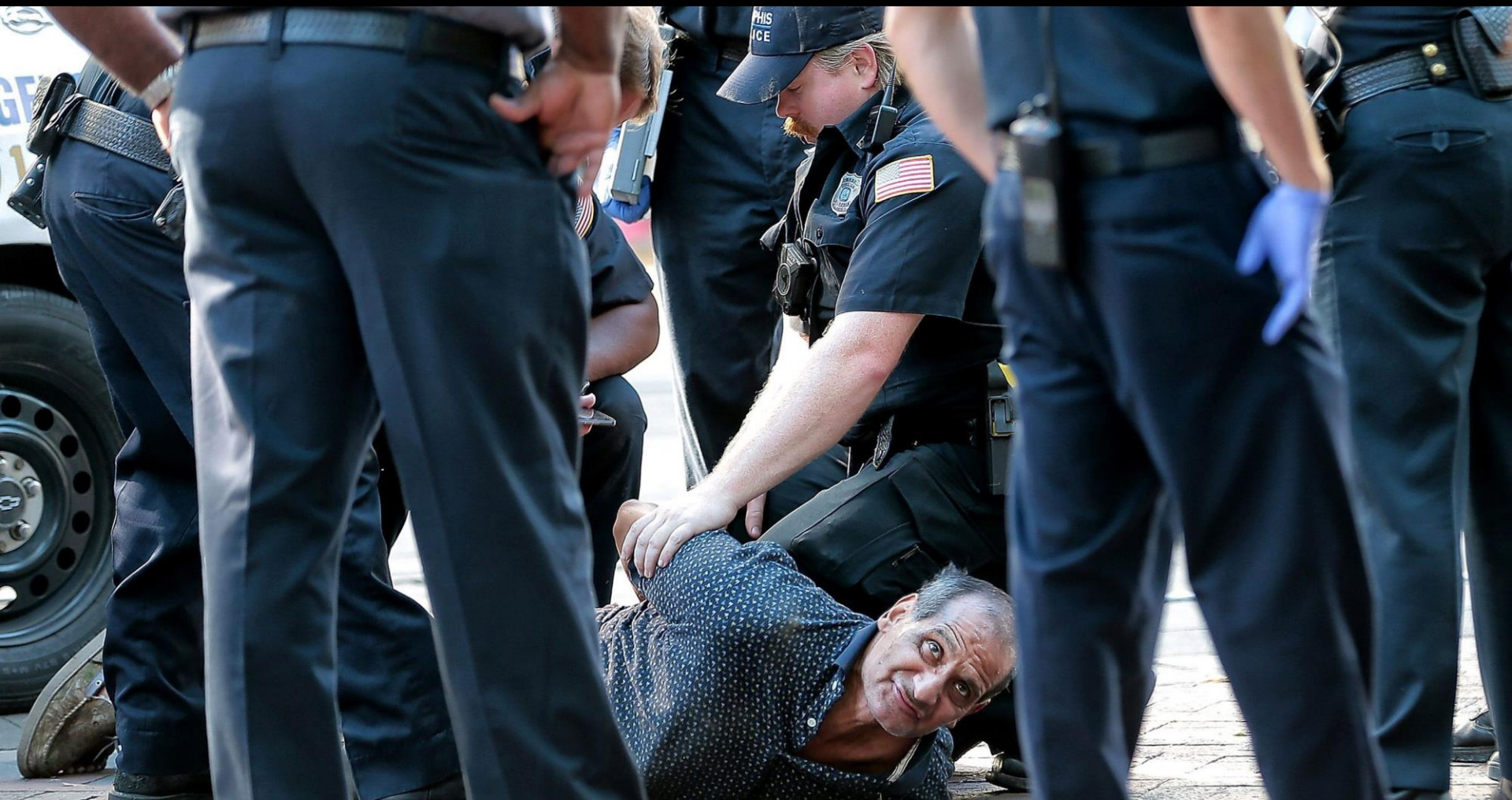


# PREBOOKING DIVERSION



# PRE-BOOKING DIVERSION

- Officers divert offenders with mental illness in lieu of making an arrest
- Charges are not typically filed
- Involves a police-based specialized response





# CRISIS INTERVENTION TEAM

- 40 hour training for subset of officers
- Develop linkages to drop-off sites
- **Outcomes:**
  - Decreased officer injury
  - Fewer arrests and more community treatment referrals

**Police**

**ER  
services**

**Booking**

**Appear  
in court**

**Jails**

**Courts**

**Jail  
reentry**

**Prison  
reentry**

**Community  
Corrections**

**Probation**

**Parole**



# POSTBOOKING DIVERSION

- **Three models:**
  - Jail-based diversion
  - Court-based diversion
  - Specialized mental health courts



# POSTBOOKING DIVERSION

- **Compared to prebooking defendants:**
  - More serious crime history
  - More serious use of alcohol and drugs
  - Less able to function socially

# POSTBOOKING DIVERSION



- Identify and release appropriate individuals
- Vary regarding amount of time in jail before release

# **“JAIL FIRST” THEORY**

- Brief incarceration may motivate
- Time to:
  - Detox
  - Stabilize on medication
  - Transition planning

# CONNECTICUT STUDY

(Robertson et al 2014)

- Connecticut has statewide jail diversion program
- Mainly occurs at court arraignments
- Community clinicians based in courts and work with police and judges to identify those with SMI

# CONNECTICUT STUDY

(Robertson et al 2014)

- **Question:**

- Does “jail first” improve outcome of defendants?

- **Compared:**

- 102 adults with SMI who had “jail first” to 102 adults with immediate diversion

# CONNECTICUT STUDY

(Robertson et al 2014)

- **Outcome:**

- Jail first more likely to receive psychotropic medication. BUT...
- No improvement in mental health outcome
- Quicker reincarceration

# CONNECTICUT STUDY

(Robertson et al 2014)



- “No evidence to support using brief, prediversion incarcerations to either motivate diversion program participation or to achieve stabilization to improve outcomes.”

# CRP POST BOOKING PROGRAM

(Alarid and Rubin 2018)

- Evaluated 102 clients
  - Misdemeanors only
  - One group (58) with mental illness only
  - One group (44) with mental illness and substance abuse disorder



# CRP POST BOOKING PROGRAM

(Alarid and Rubin 2018)

- **Results:**

- Both groups with fewer rearrests and fewer jail days in 12 months following discharge diversion compared to 12 months prior to diversion

# **SAMHSA JAIL DIVERSION INITIATIVE**

**(Steadman and Naples 2005)**

- Examined 3 pre-booking and 3 post-booking jail diversion programs
- All persons had co-occurring disorders
- 1,612 subjects were:
  - 635 diverted participants
  - 625 non-diverted participants

# FOUR KEY FINDINGS

(Steadman and Naples 2005)

- Less time in jail for diverted.
- No increase in public safety risk
- More treatment linkages to community
- Lower criminal justice costs but may have higher community treatment costs

# JAIL BASED DIVERSION REVIEW

Lange et al 2011

- Reviewed 43 published articles
- “High degree in effectiveness in reducing recidivism.”
- “Moderate effectiveness in reducing days incarcerated, reducing substance use, and improving quality of life.”

# CALIFORNIA DIVERSION PROGRAM

- **AB Bill 1810**

- Diversion granted after accusatory pleading
- Diversion is discretionary
- Defendant suffers from a mental disorder (ASPD, borderline PD, pedophilia excluded)
- Mental disorder played a role in crime
- Symptoms would respond to treatment
- Defendant would not pose unreasonable risk of danger to public safety

**Police**

**ER  
services**

**Booking**

**Appear  
in court**

**Jails**

**Courts**

**Jail  
reentry**

**Prison  
reentry**

**Community  
Corrections**

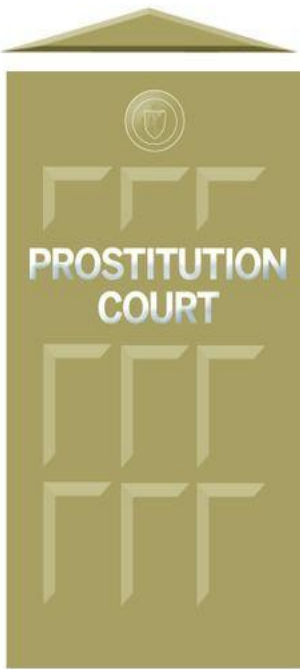
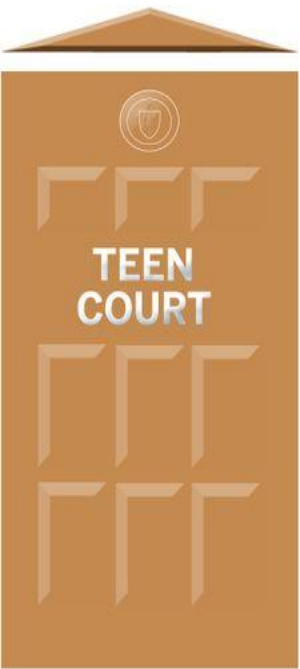
**Probation**

**Parole**



# PROBLEM SOLVING COURTS

- Founded on therapeutic jurisprudence principle
- Attempt to decrease revolving door
- Judges have greater interaction with defendant
- More community resource options





**FIRST PROBLEM SOLVING  
COURT WAS...**

# MIAMI-DADE DRUG COURT

- First court established in 1989 by Judge Herbert Klein
- Addressing escalating drug trafficking and violence





# COCAINE COWBOYS

# KEY COMPONENTS

- Non adversarial structure
- Team decision making
- Nonincarcerative sanctions and incentives
- Increased judicial involvement



## The Drug Court Process

Defendant is  
Arrested or  
indicted on  
sealed  
indictment



Defendant is  
evaluated, file is  
reviewed and  
discussed by team



Defendant  
participates and  
is monitored  
throughout  
process



Defendant Successfully  
Completes Drug Court

Defendant  
Returns to Court



Defendant Violates Drug  
Court Agreement and the  
Case Returns to  
Traditional Prosecution  
Process

Defendant goes to  
Court, Qualifies for  
Drug Court and  
Agrees to  
Participate

Defendant  
accepts plea to  
felony and signs  
Drug Court  
Contract as part  
of plea



# DRUG COURTS

- National Association of Drug Court Professionals
  - Over 2000 drug courts have developed



# **Avg. Crime Reduction**

<b>Citation</b>	<b>Institution(s)</b>	<b>No. Drug Courts</b>	<b>Crime Reduced</b>
Mitchell et al. (2012)	U.S.F., G.M.U. & Penn. State	92	12%
Rempel et al. (2012)	Urban Institute, CCI & RTI	23	13%
Wilson et al. (2006)	Campbell Collaborative	55	14%
Latimer et al. (2006)	Canada Dept. of Justice	66	9%
Shaffer (2010)	University of Nevada	76	9%
Lowenkamp et al. (2005)	University of Cincinnati	22	8%
Aos et al. (2006)	Washington State Inst. for Public Policy	57	8%

# EFFECTIVENESS


- Modest but significant reduction in recidivism
- Recidivism rates can be lowered 12-36 months after program completion
- Programs that exclude violent and repeat offenders more effective



# SUBGROUPS & OUTCOME

*Larsen et al. 2014*

- Early  
Delinquents
- Subthreshold  
need
- Psychological  
problems

A man with light brown hair, wearing a dark suit jacket over a light blue shirt, is shown from the chest up. He is pointing his right index finger directly at the viewer. A white speech bubble with a black outline is positioned in the upper right corner, containing text. The background is a solid blue color.

*Does  
“coercing”  
people into  
drug treatment  
effective?*

# THREE ASSUMPTIONS

- Drug use is related to crime and decreased drug use=decreased crime.
- Treatment is effective and can decrease drug related crime
- Drug-abusing offenders can benefit from involuntary treatment

# **SUBSTANCE ABUSE AND CRIME PREVENTION ACT**

- Proposition 36, approved in 2000
- Adults with non-violent drug offenses can be sentenced to probation with treatment or incarceration
- After program completion, can request conviction set aside

# PRENDERGAST ET AL. 2009

- Assessed 1700 referred inmates
- **Coercion:**
  - Clients believed that they had exercised a choice to participate
  - Perceived coercion did not predict completion or arrest
- **Motivation:**
  - Client who recognized they had a drug problem more likely arrested for drug crime

# TREATMENT ENGAGEMENT

- Perceived coercion
- Internal motivation

# MENTAL HEALTH COURTS

- **1994**: Mental Health Task Force in Broward County created
- **1997**: Broward County MHC formed
  - Focused on those with mental illness
  - Accused of ordinance violations or minor offense

# MENTAL HEALTH COURTS

- Approximately 350 MHCs across US
- Vary greatly across jurisdictions
- Require presence or history of mental illness
- Review of 87 MHCs:
  - 60% accepted felony cases



# MENTAL HEALTH COURTS

- **Common characteristics:**
  - Give informed consent regarding participation
  - Follow treatment plan
  - Monitoring by treatment team and/or probation
  - Sanctions imposed if agreement violated

# MHCs AND CHARGES

- Most, but not all, require guilty plea upon entry
- Some only enroll participants after revocation or violation of probation/parole
- Some dismiss instant offense upon program completion

# MHCs OUTCOMES RESEARCH

- Research difficult due to variability of courts
- Recidivism and psychiatric outcomes defined differently among MHCs
- Rarely use experimental design to study outcome

# MHCs AND RECIDIVISM

- Recidivism definitions:
  - New arrest or incarceration
  - Technical violations
- Most studies show decreased recidivism however defined

# FACTORS ASSOCIATED WITH DECREASED RECIDIVISM

(Honegger 2015)

- Graduating program
- Hispanic ethnicity
- More serious charge
- Fewer pre-entry arrests/incarcerations
- No substance use history
- Dx of bipolar over schizophrenia or depression

# SAN FRANCISCO MHC OUTCOMES

## McNiel and Binder 2007



- In 2003-2004, 8,325 individuals diagnosed with mental disorder at San Francisco Jail
- Studied 172 persons who entered mental health court

# SAN FRANCISCO MHC OUTCOMES

- Results:
  - MHC participants showed longer time without any new charges or violent charges compared with non participants
  - After 18 months, MHC participants 26% less likely to have any crime and 55% less likely to have violent crime

# MHC ENTRY AND COMPETENCY

- 20% referred nationally for competency evaluation found incompetent
- Ohio study found that 77% of MCH participants referred for competency evaluation were found incompetent
- Allowing pre-plea options will likely increase eligibility for MHC



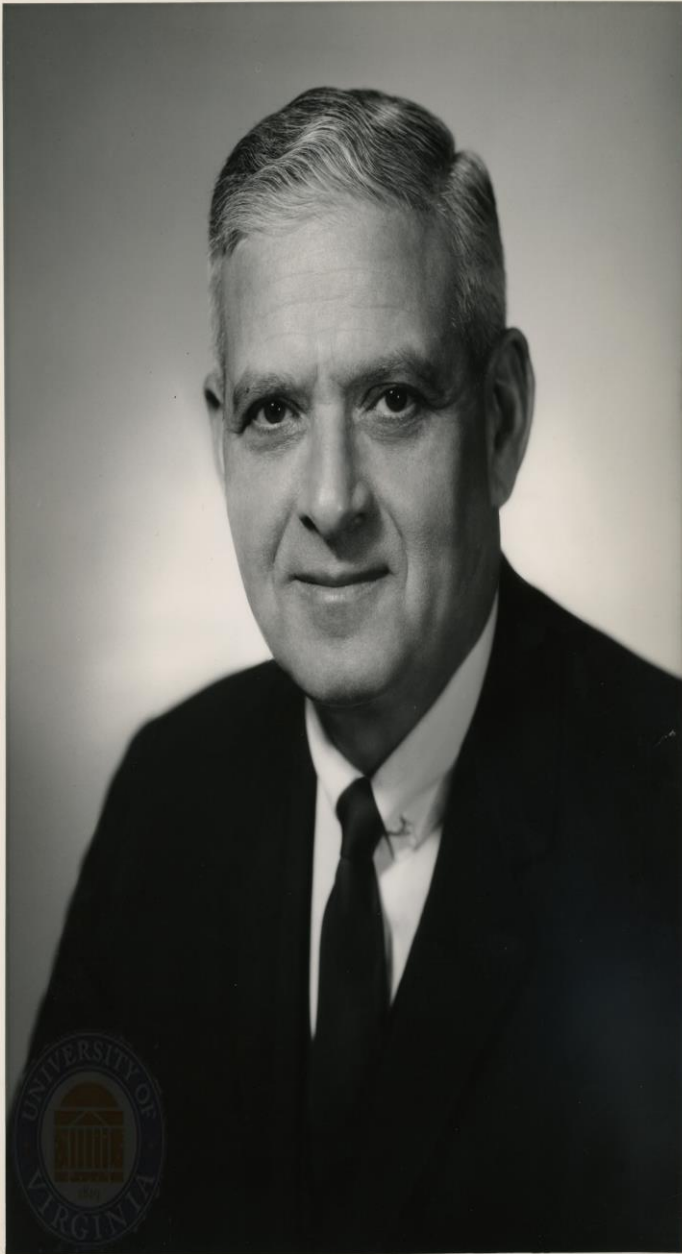




# DIVERSION OUTCOME SUMMARY

- Program monitoring essential
- Outcomes impacted by strength of community services
- Models of service delivery should accompany diversion program
- Must have trust and support for various agencies, law enforcement, and court personnel





FABIAN BACHRACH

**“These are  
large  
demands,  
but the  
problems  
cannot be met  
with less.”**

*David Bazelon, Chief Judge  
U.S. Court of Appeals  
Washington, DC*